



May 4, 2015

Mr. Gerard Poliquin
Secretary to the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: NASCUS Comments on Proposed Rule 791 and IRPS 15-1

Dear Mr. Poliquin:

The National Association of State Credit Union Supervisors (NASCUS)¹ submits the following comments in response to the National Credit Union Administration's (NCUA's) proposed changes to Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2 and 13-1.² The amended IRPS, 15-1, would increase the asset threshold used by NCUA to define a small entity under the Regulatory Flexibility Act (RFA) from \$50 million to \$100 million.³

While NASCUS supports raising the regulatory threshold that defines a small credit union pursuant to the RFA, we note that that RFA classification as a small credit union does not directly convey any immediate regulatory relief to credit unions.

As NCUA notes in the preamble to the proposal, the RFA classification of a small credit union affects NCUA's obligations to conduct a more detailed analysis of proposed and final rules with respect to the rule's impact on small entities. The RFA does not mandate any particular regulatory relief, and the change in definition, if finalized, would not alter the application of NCUA's current rules. While NCUA has, commendably, taken steps to bifurcate the application of recent final rules by asset size risk analysis, none of those rules incorporate the definition of small credit union in the rule. Rather, those rules specifically cite an asset threshold, generally \$50 million.⁴

NASCUS recommends NCUA revisit current rules containing asset thresholds to evaluate substituting the small credit union definition for the articulated asset size in those rules.

In addition to providing relief from regulatory prescriptions, NCUA should also consider the regulatory relief that comes from promulgating consistent, easy to understand rules. NASCUS notes that other NCUA initiatives, such as the Small Credit Union Exam Program (SCUEP) are linked to an articulated asset size rather than to the RFA definition of small credit union

¹ NASCUS is the professional association of the nation's state credit union regulatory agencies.

² IRPS 13-1, 78 FR 4032 (Jan. 18, 2013).

³ Public Law 96-354.

⁴ See 12 CFR 741.12, Liquidity and contingency funding plans, (78 FR 64883, Oct. 30, 2013); 12 CFR 741.3(b)(5), Criteria, (78 FR 4037, Jan. 18, 2013);

notwithstanding the use of the term “small credit union” in the name of the program.⁵ To minimize the chance for confusion, NCUA should seek to streamline, and apply consistently, the use of the term small credit union.

In publishing the proposal for comment, NCUA invited comments specifically on the use of \$100 million as a threshold as opposed to higher thresholds such as the \$550 million used on the bank side. In verbal comments, NCUA noted that setting a \$100 million threshold would maintain consistent percentage of assets and institutions under the credit union RFA small definition as the banking RFA small definition. However, the RFA contains no requirement that NCUA’s definition be comparable in terms of covered entities. The RFA does include a default definition for small organizations as one that is not “dominant in its field.”⁶ Clearly, even \$250 million asset sized credit unions are not dominant within the field of financial services. Credit unions do not compete in the marketplace merely among themselves, but in the broader marketplace. At a minimum, NCUA should provide stakeholders with a thoughtful analysis of why the spirit of the RFA, to reduce regulatory burden on smaller organizations within a marketplace, should not be read in the credit union context to apply to the broader financial services marketplace. Given that, as discussed above, the RFA does not mandate any specific change to existing NCUA regulations, it is difficult to see how acknowledging that credit unions in general are smaller organizations for purposes of the RFA, presents any greater risk to the share insurance fund.

NASCUS acknowledges that increasing the asset threshold above \$100 million to define a small credit union would have the immediate effect of drastically increasing the credit unions eligible for assistance from NCUA’s Office of Small Credit Union Initiatives, thereby possibly straining or diluting the resources available. However, NCUA has not cited resource strain as a concern in its discussions of the proper asset threshold.

That NCUA proposes raising the asset threshold for classification as a small credit union, and committed to reviewing that threshold regularly, is laudable. NASCUS fully supports NCUA’s efforts. Thank you for the opportunity to provide comments on the proposed changes to NCUA’s regulatory definition of a small credit union and proposed IRPS 15-1. We would be pleased to discuss these comments in detail at NCUA’s convenience.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
General Counsel

⁵ NCUA Letter to Credit Unions 15-CU-01 Supervisory Priorities for 2015.

⁶ 5 USC 601(4).